

Message Text

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ACTION AF-08

INFO OCT-01 ISO-00 DHA-02 CIAE-00 DODE-00 PM-04 H-01

INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 IO-13 /069 W

-----012001 096993 /47

R 011340Z MAR 77

FM AMCONSUL DURBAN

TO SECSTATE WASHDC 2502

INFO AMCONSUL CAPE TOWN

AMCONSUL JOHANNESBURG

AMEMBASSY PRETORIA

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CAPE TOWN FOR EMBASSY

E.O. 11652: N/A

TAGS: PINT, PINS, SHUM, SF

SUBJECT: MDLULI CASE: SAG TAKES NO FURTHER ACTION

REF: (A) 76 DURBAN 561, (B) DURBAN 69,

1. SUMMARY (LIMITED OFFICIAL USE) NATAL ATTORNEY GENERAL HAS FOUND THAT IN ABSENCE OF "PRIMA FACIE CASE" HE CANNOT INSTITUTE CRIMINAL PROCEEDINGS AGAINST POLICE AND THUS WILL TAKE NO FURTHER ACTION IN MDLULI CASE. PRESS HAS REJECTED OUTCOME AND CALLED FOR FURTHER JUDICIAL INQUIRY INTO MDLULI AND OTHER CASES INVOLVING DEATH IN DETENTION IN SOUTH AFRICA. WIDESPREAD CONSENSUS OF POST'S SOURCES IS THAT MDLULI WAS IN FACT BEATEN TO DEATH IN DETENTION AND THAT POLICE COVERUP ENSUED, DIRECTED BY SENIOR SECURITY POLICE OFFICIAL. SAG HAS STILL TO PRODUCE FINDINGS ON "MDLULI PHOTO" ISSUE. END SUMMARY (LIMITED OFFICIAL USE).

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BEGIN UNCLASSIFIED

2. NATAL ATTORNEY GENERAL, CECIL REES, ANNOUNCED FEBRUARY 25 HIS FINDINGS IN FURTHER INVESTIGATION OF THE DEATH OF JOSEPH MDLULI WHO DIED AS A RESULT OF INJURIES RECEIVED WHILE UNDERGOING INTERROGATION

BY DURBAN SECURITY POLICE LAST MARCH 20. (REES' INVESTIGATION WAS A FOLLOW-ON TO TRIAL IN WHICH FOUR SOUTH AFRICAN SECURITY POLICEMEN WERE ACQUITTED OF MDLULI'S MURDER BUT WHERE THE TRIAL JUDGE EXPRESSED DISSATISFACTION WITH THE EVIDENCE PRESENTED REF A). REES SAID THAT AFTER CONDUCTING A FURTHER FULL INVESTIGATION INTO MDLULI'S DEATH AS REQUESTED BY NATAL JUDGE PRESIDENT, MR JUSTICE JAMES, HE HAD CONCLUDED HE COULD NOT INSTITUTE CRIMINAL PROCEEDINGS AGAINST ANYONE AND THEREFORE HE HAD DECIDED TO TAKE NO FURTHER ACTION IN THE CASE. SUPPORTING HIS DECISION, REES SAID THERE HAD BEEN A MEDICAL DISPUTE AS TO TIME OF MDLULI'S DEATH AND "NO EVIDENCE TO SHOW THAT ANYONE CAUSED HIS DEATH EITHER WILFULLY OR NEGLIGENTLY." REES ADDED, "I HAVE TO PROVE BEYOND A REASONABLE DOUBT THAT A PARTICULAR PERSON OR PERSONS CAUSED HIS DEATH AND I HAVE FOUND THAT I DO NOT EVEN HAVE A PRIMA FACIE CASE."

3. REES IN HIS ANNOUNCEMENT MADE NO MENTION OF SECONDARY ASPECT OF CASE HE WAS THEORETICALLY INVESTIGATING, NAMELY DISCREPANCIES BETWEEN OFFICIAL PHOTOS OF MDLULI'S BODY AND PHOTOS SUBSEQUENTLY CIRCULATED IN LONDON (PARA 3, REF. B).

4. PRESS REACTION TO REES' DECISION REFLECTED CRITICALLY ON ADEQUACY OF INVESTIGATION. DURBAN SUNDAY TRIBUNE FEB27 CALLED FOR PUBLIC PRESSURE LIMITED OFFICIAL USE

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FOR JUDICIAL INQUIRIES INTO ALL DEATHS IN DETENTION, INCLUDING MDLULI'S, TO "PINPOINT WHERE THE BREAKDOWN IN POLICE INVESTIGATIONS OCCURRED AND WHETHER POLICE OFFICERS WERE NEGLIGENT IN THEIR INVESTIGATIONS." TRIBUNE SAID NATAL' JUDGE PRESIDENT STILL BELIEVES SOLVING MDLULI'S DEATH IS PROBLEM OF GREAT IMPORTANCE AND THAT UNLESS THIS VIEW WERE UPHELD, OUR SOCIETY TAKE NO CLAIM TO BEING CIVILIZED." SUNDAY TIMES FEB. 27 REJECTED IDEA OF MDLULI'S DEATH BEING SUICIDE AND EDITORIALIZED, "SO LONG AS THE SUSPICION GROWS THAT INTERROGATION IS AS BRUTAL AS SOUTH AFRICA'S CRITICS SAY IT IS, THE RELATION BETWEEN POLICE AND PUBLIC WILL CONTINUE TO DECAY." TIMES CALLED FOR SCRAPPING OF ARBITRARY DETENTION LAWS AND THROWING WHOLE DETENTION PROCESS OPEN TO "LIGHT OF DAY." NATAL WITNESS AND DURBAN DAILY NEWS BOTH REJECTED REES' FINDINGS AS UNSATISFACTORY AND EMPHASIZED SERIOUS IMPACT CASE WILL HAVE BOTH ON PUBLIC UNEASE ABOUT WHAT

OCCURS IN POLICE INTERROGATIONS AND ON SOUTH AFRICA'S
REPUTATION ABROAD.

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CAPE TOWN FOR EMBASSY

5. NATAL UNIVERSITY LAW PROFESSOR, A.S. MATHEWS,
HAS DESCRIBED MDLULI CASE AS CLASSIC EXAMPLE OF
SAG'S INABILITY TO "POLICE THE POLICE." HE PROPOSED
THAT PRACTICE OF 180-DAY DETENTION, WHICH IS FREQUENTLY
APPLIED AGAINST MAJOR TRIAL WITNESSES TO KEEP
THEM INCOMMUNICADO UNTIL THEY ARE REQUIRED TO
TESTIFY, SHOULD BE APPLIED ALSO TO POLICE OFFICERS
CHARGED WITH SERIOUS CRIMES SUCH AS IN THE MDLULI
CASE.

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6. COMMENT: POST HAS CONDUCTED SURVEY OF
KNOWLEDGEABLE NATAL SOURCES IN ATTEMPT TO
DETERMINE ADDITIONAL FACTS BEHIND MDLULI'S DEATH
AND GENERAL ATTITUDE TOWARD CASE. UNIFORM CONSENSUS
IS THAT MDLULI WAS CRUELLY BEATEN TO DEATH BY ONE OR
MORE SA SECURITY POLICE OFFICIALS WHOSE
IDENTITY HAS BEEN SCREENED BY POLICE COVER-UP.
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IT IS WIDELY BELIEVED THAT COLONEL FRANS STEENKAMP, HEAD OF DURBAN SECURITY POLICE, KNOWS IDENTITY OF MDLULI'S ASSAILANT(S). STEENKAMP WAS AWAY FROM DURBAN ON OFFICIAL BUSINESS AT TIME OF MDLULI' DEATH AND HAS STATED THAT HE GAVE ORDERS THAT NO INTERROGATIONS WERE TO BE CONDUCTED IN HIS ABSENCE. NEVERTHELESS MDLULI WAS INTERROGATED, WITH FATAL RESULTS WHICH SEVERAL SOURCES CLAIM CLAIM CAUSED ANGER IN POLICE CIRCLES SINCE MDLULI WAS TO HAVE BEEN PROMINENT WITNESS IN ANC TERRORISM TRIAL CURRENTLY UNDER WAY IN PIETERMARITZBURG. STEENKAMP SUBSEQUENTLY DIRECTED COVER-UP OPERATION IN DURBAN ALTHOUGH WITH WHAT LEVEL OF HIGHER BACKING NO ONE IN DURBAN HAS BEEN PREPARED TO STATE.

7. AN IMPORTANT SUBSIDIARY QUESTION IS WHETHER THE NATAL JUDICIARY TOOK PART IN THE COVER-UP OR, LIKE THE PUBLIC, WAS FRUSTRATED BY IT. POST'S SOURCES ALMOST UNIFORMLY BELIEVE THAT THE JUDICIARY IN FACT TRIED TO DO ITS BEST BUT COULD MAKE NO HEADWAY AGAINST PHALANX OF POLICE SILENCE. THEIR PREDOMINANT VIEW IS THAT CASE SHOULD NOT BE ALLOWED TO DROP AND THAT A HIGH-LEVEL COMMISSION OF INQUIRY SHOULD BE CONVENED TO FOLLOW UP. HOWEVER, THERE IS NO SANGUINE HOPE THAT MINISTER KRUGER WILL ALLOW THIS NOTORIOUS CASE TO BE GONE INTO FURTHER. PROBABLY, IN FACT, SAG WILL PRODUCE FINDINGS RE THE MDLULI "PHOTO ISSUE" (PARA 3 ABOVE) DESIGNED TO OFFSET -- AT LEAST IN ITS OWN VIEW -- SOME OF THE NEGATIVE IMPACT OF THE MDLULI DEATH PROBE.
FARBER

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